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FROM 'SPECULATIVE' TO 'PRACTICAL' LEGAL EDUCATION:
THE DECLINE OF THE GLASGOW LAW SCHOOL, 1801–1830

by

JOHN W. CAIRNS (Edinburgh)*

A Royal Commission for Visiting the Universities and Colleges in Scotland was appointed on 23 July 1826. Its members were: the Duke of Gordon; the Duke of Montrose; the Marquis of Huntly; the Earl of Aberdeen; the Earl of Rosebery; the Earl of Mansfield; Viscount Melville; Lord Binning; Lord President Hope; Sir William Rae, Lord Advocate; Lord Justice-Clerk Boyle; Chief Baron Sir Samuel Shepherd; William Adam, Chief Commissioner of the Jury Court; John Hope, Solicitor General; George Cranstoun, Dean of the Faculty of Advocates; Dr. Taylor, Moderator of the General Assembly; and Dr. Cook, former Moderator¹. A supplementary commission of 28 September added to this list the Earl of Lauderdale, Sir Walter Scott, the Rev. Dr. Lee, Henry Home Drummond, advocate, and James Moncrieff, advocate². This was a distinguished body of the great and the good of early-nineteenth-century Scotland. Of these, Lauderdale, Rae, Boyle, Adam, Cranstoun, and Moncrieff had studied at Glasgow under John Millar, who there had held the regius chair of Civil Law from 1761 to 1801³.

A special sub-commission that included five of Millar's pupils visited the University of Glasgow, and on 9 January 1827 took evidence from Robert Davidson, Millar's successor⁴. What these Commissioners discovered at their *alma*

* I am grateful to Michael Moss and Lesley Richmond of Glasgow University Archives and David Weston of Glasgow University Library for their assistance. I am indebted to the Faculty of Advocates in Edinburgh and the Royal Faculty of Procurators in Glasgow for permission to consult and cite their private records. To my great advantage, Roger Emerson kindly brought the correspondence of Professor Jardine to my attention as containing material relevant to my concerns. He also offered much useful criticism. The staff of the Special Collections in Edinburgh University Library were helpful in innumerable ways. I benefited from the criticism of the editorial board of the *Tijdschrift voor Rechts-geschiedenis* and of Raymond Cocks, Hector MacQueen, David Sellar, and Alan Watson, though not all—if any—of these individuals would entirely agree with what I have written here.

1. Commission for Visiting the Universities and Colleges in Scotland 23d July 1826, in *Evidence, Oral and Documentary, taken and received by the Commissioners appointed by his Majesty George IV. July 23d, 1826; and reappointed by his Majesty William IV., October 12th, 1830; for visiting the Universities of Scotland. Volume I: University of Edinburgh* (henceforth *Evidence* . . . *Volume I: University of Edinburgh*), 1837 Parliamentary Papers XXXV, p. 1-2.

2. Commission for Visiting the Universities and Colleges of Scotland, in *ibid*, p. 3-5.

3. On these men as Millar's pupils, see W.C. Lehmann, *John Millar of Glasgow, 1735–1801: His Life and Thought and his Contributions to Sociological Analysis*, Cambridge 1960, p. 36-37.

4. *Evidence, Oral and Documentary, taken and received by the Commissioners ap-*

mater cannot have pleased them⁵. When the report of the Royal Commission was published in 1831 it resolutely stated: 'It is perhaps scarcely necessary to observe, that it is only in the University of Edinburgh that a full course of instruction in the Science of Law can with propriety be established; at least in the present circumstances of the country'⁶. The report stressed that law ought to 'be studied as a liberal and enlightened science', so that students did not 'enter on practice at the Bar without any acquaintance with the general principles of Jurisprudence, and with limited and contracted views of the subject of their profession'. The 'science of Law' had to be taught in a way suitable 'for making an accomplished and enlightened Advocate'. The Commissioners emphasised:

The real interests of the community may be most materially sacrificed, if the Course of Study of Law shall be adapted wholly to the supposed convenience of a portion of the Students. The country is deeply interested in the character, the independence and influence of the Advocates to whom the defence of their property and liberties may be entrusted; and it will be in vain to hope that the independence and character of the Bar can be maintained, if the study of Law is not conducted on an enlightened and philosophical plan.

The great extension of the subject only renders it the more important to provide that the instruction of the Students shall not be limited to the details of a technical art, and the philosophy and science of Law sacrificed, in order to furnish materials for the Manual of a Practitioner⁷.

This was a firm endorsement of broad, liberal legal education: the study of law was not to be narrowly 'practical'—indeed focusing on the 'practical' to the exclusion of the 'philosophical' was viewed as a self-defeating delusion. These were ideals of the education of lawyers that reached back to the seventeenth century in Scotland, and ultimately back to the legal humanists of sixteenth-century France.

It is tempting to see in these remarks the influence of John Millar's pupils. Millar had been an outstandingly successful teacher, turning the University of Glasgow into the leading law school in the British isles, both through his sheer ability as a teacher, and through his offering a broad, polite, and liberal curriculum of Roman law, jurisprudence, government, Scots law, and English law. He emphasised the dynamic aspect of law and its links to history, philosophy, and society in classes that attracted future statesmen and leaders of the bar⁸. Millar's ex-

pointed by his Majesty George IV. July 23d, 1826; and re-appointed by his Majesty William IV., October 12th, 1830; for visiting the Universities of Scotland. Volume II: University of Glasgow (henceforth Evidence ... Volume II: University of Glasgow), 1837 Parliamentary Papers XXXVI, p. 1, 17, 145-148.

5. Lauderdale, Rae, Boyle, Cranstoun (now Lord Corehouse), and Moncrieff (now Dean of Faculty) were on the Glasgow sub-commission; none was present at the questioning of Davidson, however, but they would have had access to his oral testimony and to the documentary evidence.

6. *Report Made to His Majesty by a Royal Commission of Inquiry into the State of the Universities of Scotland*, in 1831 Parliamentary Papers XII, p. 53.

7. *Ibid.*, p. 54.

8. See J.W. Cairns, *Rhetoric, Language, and Roman Law: Legal Education and Improvement in Eighteenth-Century Scotland*, *Law and History Review*, 9 (1991), 31-58; idem, 'Famous as a school for Law, as Edinburgh ... for medicine': *Legal Education in*

ceptional qualities were recognised by his colleagues, one of whom wrote to a friend on the professor's death: '[O]ur society has sustained an irreparable loss: as a Professor we shall never see the like of him—a most indefatigable, able and successful Teacher—and taught Branches of General Education scarcely taught any where or at least no where so well'⁹.

The story of legal education in Glasgow under Davidson was sad. When questioned by the sub-commission he described his chair as devoted to Civil or Roman law, but stated that he had not taught Roman law for four or five years because he was no longer willing to lecture to fewer than five students. He did, however, lecture upon Scots law in a course lasting one year. The bulk of his pupils were writers' clerks and apprentices in Glasgow, who afterwards often went to a writer's office in Edinburgh, frequently attending the lectures of the Professor of Scots Law in that city's university. It was rare for one of his students to become an advocate. He only attracted students to his lectures in Scots law because the Faculty of Procurators required future members to attend such a course. He wished they were also required to attend one in Civil law. Almost without exception, his students came from Glasgow and its immediate neighbourhood¹⁰.

The members of the sub-commission asked Davidson if Roman law had once been regularly taught in Glasgow. He replied: 'Mr. Millar, my predecessor, was a man of great eminence; he was quite a speculative man; I consider myself rather a practical man. This was a very famous school of Roman Law in Mr. Millar's time'¹¹. It is obvious that in the view of the Commission it was Davidson's rejection of the 'speculative' in favour of the 'practical' that had made a large contribution to the decline of the University of Glasgow from the United Kingdom's leading school of law to an institution teaching the clerks and apprentices of local, provincial lawyers.

This paper—the last of four dealing with the history of legal education in the University of Glasgow between 1714 and 1830¹²—will address that decline. In so far as Davidson made no contributions of significance to legal science, he is now deservedly forgotten. Yet it is important to understand his tenure of the regius chair in Glasgow. First, it indicates the types of pressures and influences that shaped the history of legal education in Scotland and elsewhere. We must not approach that history as the inevitable onward march of the intellect. We must accept its contingency. It is necessary to explore the impact of politics and bio-

Glasgow, 1761–1801, (henceforth Cairns, 'Famous as a school for Law, as Edinburgh . . . for medicine'), in A. Hook and R. Sher (eds.), *The Glasgow Enlightenment*, Edinburgh 1994, p. 133–159.

9. George Jardine to Robert Hunter, 16 July, 1801, Glasgow University Library (henceforth GUL), MS Gen. 507/118.

10. *Evidence . . . Volume II: University of Glasgow*, p. 145–146; University Register of Law Students, 1818–1843, Glasgow University Archives (henceforth GUA) 26798.

11. *Evidence . . . Volume II: University of Glasgow*, p. 146.

12. J.W. Cairns, *The Origins of the Glasgow Law School: The Professors of Civil Law, 1714–1761*, in P. Birks (ed.), *The Life of the Law* [Proceedings of the Tenth British Legal History Conference, Oxford 1991], London and Rio Grande 1993, p. 151–195; idem, *William Crosse, Regius Professor of Civil Law in the University of Glasgow, 1746–1749: A Failure of Enlightened Patronage*, *History of Universities* 12 (1993), 159–196; and idem, 'Famous as a school for Law, as Edinburgh . . . for medicine' (n. 8 *supra*).

graphy on *Universitätsgeschichte*. Secondly, his tenure of the regius chair not only marked the end of one aspect of the Scottish Enlightenment (the scientific Whiggism we associate with Adam Smith and John Millar and their development of a science of legislation) but also brought forth condemnation of his narrow, limited approach to legal education. When the degree of LL.B. was created in Scotland in 1862, and when the Faculty of Advocates reformed its requirements for admission at the same period, it was the broad, liberal tradition of legal education deriving from Millar in Scotland, and now experienced by some Scots in Germany, that ensured that Roman law and jurisprudence were seen as vital in a legal education that was viewed as essentially academic and properly centred in the universities¹³.

I

The first issue to consider is that of the numbers of students of law in Glasgow. J.D. Mackie suggests that John Millar 'may have gone on too long, for his successor Robert Davidson found few students in Civil Law when he took over'¹⁴. He offers no evidence for this statement and opinion, which he presumably based on the known statistics for students during Davidson's tenure of the Chair. There is no precise, direct evidence for the size of Millar's classes¹⁵.

Mackie's suggestion presupposes that Millar, by the time of his death, was a man of failing powers. There is no evidence of this. Born in 1735, Millar was only in his middle sixties when he died on 30 May 1801 after completing his courses for the academic year 1800–1¹⁶. We do have the evidence of William Lamb, however, who attended the University of Glasgow and stayed with Millar in the latter's last two years. Lamb found Millar an energetic, vigorous man¹⁷. Though ill at the end of 1799, Millar had fully recovered, and his death was the result of a sudden illness and quite unexpected¹⁸. He attended Faculty and Senate meetings right up to his death¹⁹. Furthermore, in his final session he taught both of his two courses on the *Institutes* of Justinian, and those on the *Digest*, govern-

13. J.W. Cairns, *A History of the Faculty of Advocates to 1900*, in *The Laws of Scotland* [Stair Memorial Encyclopaedia, vol. 13], Edinburgh 1992, p. 499–536 (paras. 1239–1288), at p. 527–534 (paras. 1278–1283).

14. J.D. Mackie, *The University of Glasgow 1451–1951: A Short History*, Glasgow 1954, p. 234. See also *ibid.* p. 166 n. 3 and p. 187 for similar comments.

15. For a discussion of this, see Cairns, 'Famous as a school for Law, as Edinburgh ... for medicine', p. 148–150. Law students of Millar can be found in the 'Book of Attested Students 1766 to 1843', GUA 26680, but the names provide no guide to the size of the class.

16. See, e.g., Glasgow Courier, 2 June 1801.

17. P. Zeigler, *Melbourne: A Biography of William Lamb 2nd Viscount Melbourne*, London 1976, p. 29–31.

18. Jardine to Hunter, 16 July 1801, GUL, MS Gen. 507/118; J. Craig, *Account of the Life and Writings of John Millar, Esq.* (henceforth Craig, *Life and Writings of John Millar*), prefixed to J. Millar, *The Origin of the Distinction of Ranks: Or, an Inquiry into the Circumstances which give rise to Influence and Authority, in the different Members of Society*, 4th edn., Edinburgh 1806, p. cxxviii–cxxix.

19. Minutes of Meetings of Faculty, 1800–1806, GUA 26696, p. 44 (21 May 1801); Minutes of Meetings of Senate, 1787–1802, GUA 26687, p. 329 (4 May 1801).

ment, and English law²⁰. Indeed, the introduction of this last course, probably in 1798, was not the action of a man of diminishing energy and ability who was finding it difficult to attract students²¹. Mackie's suggestion must therefore be rejected as unfounded.

Unmentioned by Mackie are two other possible causes of a reduction in the number of Millar's students. The first was the opprobrium he attracted in the 1790s because of his political views as a Whig believed to have republican leanings²². Francis Jeffrey, for example, was alleged to have been forbidden by his father to attend Millar's classes²³. The second was the reviving success of legal education in Edinburgh from the late 1780s²⁴. Neither of these necessarily requires us to suppose that the size of Millar's class was diminished significantly or, indeed, at all. Not all parents shared the attitude of Jeffrey's father. For example, George Jardine, the Professor of Logic, expected one father to find unacceptable the prospect of his son, a law student in Glasgow, boarding with Millar because of the latter's politics, but, after Millar's death, suspected the father might withdraw his son and send him to Edinburgh to study law²⁵. Millar's fame as a teacher could thus overcome Tory prejudices against his Whig views. Furthermore, at this time the overall number of law students in Scotland was probably starting to increase in a significant way, suggesting that Edinburgh's revival may not necessarily have been at Glasgow's expense²⁶. However this may be, the only definite evidence we have—if anecdotal and indirect—suggests that Millar continued to be successful in attracting students through the 1790s. Not only did John Craig, Millar's biographer, fail to qualify for the 1790s his comment in 1806 that Millar 'had, frequently, about forty students of Civil Law; while those who attended his Lectures on Government, often amounted to a much greater number', but more neutral observers such as Thomas Newte, Robert Heron, and Arthur Browne also continued throughout the 1790s to stress Millar's phenomenal success in drawing students to Glasgow²⁷. The correspondence of Professor Jardine suggests that there may have been some reduction in

20. See GUL, MS Gen. 243, for lectures on English law dating from 1800–1801. He taught the other courses every year. See Cairns, 'Famous as a school for Law, as Edinburgh ... for medicine', p. 136–139.

21. See W.C. Lehmann, *Some Observations on the Law Lectures of Professor Millar at the University of Glasgow (1761–1801)*, Juridical Review (1970), 56–77 at p. 73–74; Cairns, 'Famous as a school for Law, as Edinburgh ... for medicine', p. 136, 139, 153 n. 13.

22. Lehmann, *John Millar of Glasgow*, p. 67–71.

23. Lord Cockburn, *Life of Lord Jeffrey with a Selection from his Correspondence*, 2nd edn., 2 vols., Edinburgh 1852, vol. i, p. 10–12.

24. See Cairns, 'Famous as a school for Law, as Edinburgh ... for medicine', p. 149–150.

25. Jardine to Hunter, 6 May 1801, GUL, MS Gen. 507/117; idem to idem, 16 July 1801, GUL, MS Gen. 507/118.

26. Cairns, 'Famous as a school for Law, as Edinburgh ... for medicine', p. 150, 158 n. 59.

27. Craig, *Life and Writings of John Millar*, p. xi; T. Newte, *Prospects and Observations; on a Tour in England and Scotland: Natural, Oeconomical, and Literary*, London 1791, p. 65; R. Heron, *Observations Made in a Journey through the Western Countries of Scotland; in the Autumn of M,DCC,XCII*, 2 vols., Perth 1793, vol. ii, p. 418 (remarks repeated, 2nd edn., 2 vols. Perth 1799, vol. ii, p. 418); A. Browne, *A Compendious View of the Civil Law, being the Substance of a Course of Lectures read in the University of Dublin*, 2 vols., Dublin 1797, vol. i, p. 17.

the size of the law classes in the 1790s, but for reasons other than Millar's qualities and politics, and which would have been equally applicable to contemporary Edinburgh. Thus he commented in 1797 that, in contrast to other classes, '[t]he Law Classes always suffer in time of War'²⁸. This suggests some reduction in size. If so, how significant it was is unknown. Jardine stated in 1801 that the *Institutes* class 'had greatly diminished of late years' which he attributed to the fact that 'the knowledge of the Civil Law is not cried up so much at present as formerly'²⁹. If correct, this does not necessarily mean that the overall number of Millar's students had been significantly (if at all) reduced. Despite these two instances, the general tenor of Jardine's correspondence was overwhelmingly to stress Millar's tremendous success right up to his death in comparison with the professors in Edinburgh³⁰. Taken with the other anecdotal evidence, this tends to show that Millar remained a successful and popular teacher.

Davidson's appointment therefore brings a very obvious change in the fortunes of the chair of Civil Law. Whereas Millar in his final year had taught courses on the *Institutes*, the *Digest*, government, and English law, Davidson in his first in 1801–2 taught only one, on the *Institutes*, and only on three days a week instead of Millar's five³¹. Davidson attracted six students³². Jardine wrote: 'Our new Professor of Law has a small Class as was expected—as that Class here depended wholly upon the Great abilities and reputation of the former Professor'. He expected Davidson, however, to 'raise a very considerable Scotch Law Class'³³. The next academic year, 1802–3, Davidson again offered only a course on Justinian's *Institutes* which he taught to eleven students³⁴.

Faculty minutes reveal why in his second year Davidson still taught only the course on the *Institutes*, although the normal duties of the chair had been taken to be to teach both a course on the *Institutes* and one on the *Digest* (at least if a total of five students appeared)³⁵. On 8 June 1802, Davidson represented to the Faculty that many writers in Glasgow had mentioned to him that young men training for that profession would be inconvenienced if he did not lecture on Scots law 'the Winter after next' (that is, 1803–4) at the latest. He proposed 'to give a daily practical course', but claimed that he would not be able to do this even in 1803–4 if he had to lecture on the *Digest* in 1802–3. He further argued that the numbers in the class on the *Institutes* in 1801–2 made it doubtful if any students would offer themselves for the course on the *Digest* in the coming session, and, if any were to do so, they could not number more than one or two. He accordingly requested the Faculty's permission to postpone giving classes on the *Digest* until 1804–5 on his undertaking to lecture daily on Scots law in 1803–4, and also to read and explain the *Digest* in that session to any students

28. Jardine to Hunter, 3 Apr. 1797, GUL, MS Gen. 507/104.

29. Jardine to Hunter, 8 Dec. 1801, GUL, MS Gen. 507/119.

30. Jardine to Hunter, 16 July 1801, GUL, MS Gen. 507/118.

31. Glasgow Courier, 17 Oct. 1801; on Millar's classes see Cairns, 'Famous as a school for Law, as Edinburgh ... for medicine', p. 136–139.

32. *Evidence ... Volume II: University of Glasgow*, p. 527.

33. Jardine to Hunter, 8 Dec. 1801, GUL, MS Gen. 507/119.

34. Glasgow Courier, 5 Oct. 1802; *Evidence ... Volume II: University of Glasgow*, p. 527.

35. Craig, *Life and Writings of John Millar*, p. xix. This was based on an interpretation of the famous Act of 1727 given to William Crosse: Cairns, *William Crosse* (n. 12 *supra*), p. 177; *Evidence ... Volume II: University of Glasgow*, p. 277.

who offered themselves. He requested that the Faculty not be influenced in their decision by considering the increase in his earnings that would result from the adoption of his proposal. Since students paid a fee to attend his course, this last remark indicates that he expected (no doubt with justice) a class on Scots law to be more popular with students than one on Civil law. The Faculty acceded to his request³⁶.

Scots law had last been lectured on in Glasgow—by Millar—in 1799–1800³⁷. From 1796, the Faculty of Procurators in Glasgow had required those seeking admission to provide proof of attendance at a course of lectures on Scots law. Apprenticeships for those intending to join the Faculty lasted five years³⁸. It is therefore obvious that, by 1802, the absence of a class in Scots law must have started to become a serious worry for lawyers in Glasgow.

In 1803–4, despite the undertaking to teach Scots law, Davidson once more only advertised classes on the *Institutes* and *Digest*. He attracted a single student³⁹. Jardine wrote his friend that ‘our Law Class has altogether failed. Indeed that depended so much upon the personal abilities of our late friend—that nothing else was to be expected’⁴⁰. Offering the same two courses in 1804–5, Davidson had no students at all⁴¹. Jardine now described the ‘Law-Class’ as ‘quite annihilated—no Civil Law Lectures these two years’. Perhaps his comment that ‘it is said that the Scotch Law Lecture is only to begin next session’ should be read as betraying some impatience with Davidson’s inactivity⁴². The course on Scots law was finally added in 1805–6, but no students offered themselves for any of the three courses⁴³. In this session, James Millar, Professor of Mathematics, the son of Davidson’s predecessor, was authorised by the Faculty on 25 November 1805 to give lectures on English law⁴⁴. Millar had previously been granted such a permission during his father’s lifetime, and, of no great distinction as a mathematician, had at one time considered a career at the English bar, and had studied law with his father⁴⁵. This must have appeared threatening to Davidson, given that Millar obviously had some knowledge of and experience

36. GUA 26696, p. 112–113.

37. Glasgow Courier, 15 Oct. 1799.

38. This was introduced by the Royal Charter granted to the Faculty of Procurators on 1 July 1796. See Library of the Royal Faculty of Procurators, Sederunt Book 1761–1796, 4 March 1796 (no page or folio number), and Sederunt Book of the Faculty of Procurators 1796–1832, p. 1, 8, and 15 (15 July 1796). For the regulations putting the requirement of the charter into effect, see Sederunt Book 1796–1832, p. 40–49 at p. 47. Apprentices would have to produce evidence of attendance at the lectures at their examinations for admission.

39. Glasgow Herald and Advertiser, 7 Oct. 1803; *Evidence . . . Volume II: University of Glasgow*, p. 527.

40. Jardine to Hunter, 9 June 1804, GUL, MS Gen. 507/126.

41. Glasgow Herald and Advertiser, 24 Sept. 1804; *Evidence . . . Volume II: University of Glasgow*, p. 527.

42. Jardine to Hunter, 15 Aug. 1805, GUL, MS Gen. 507/128.

43. Glasgow Herald, 7 Oct. 1805; *Evidence . . . Volume II: University of Glasgow*, p. 527.

44. GUA 26696, p. 373.

45. Minutes of Meetings of Faculty, 1789–1794, GUA 26694, p. 269 (7 Dec. 1792); John Leslie to James Brown, 20 Jan. 1796, Edinburgh University Library (henceforth EUL), MS Dc. 2.57, fos. 207–208; Mackie, *University of Glasgow* (n. 14 *supra*), p. 217; GUA 26680, p. 49.

and interest in law⁴⁶. Millar accordingly wrote to Davidson on 27 January 1806 that the Faculty should minute that the proposed lectures would not prejudice Davidson's right to lecture on the same subject in the future. This was done by inscribing the letter in the Faculty's minute book on 7 March 1806⁴⁷. Perhaps Davidson was particularly sensitive on this subject in an academic year when the Professor of Medicine had been authorised to teach in the unused law class room⁴⁸.

Davidson's luck started to turn the next year, and he had one student in Civil law and twenty-nine in Scots law⁴⁹. Thereafter until 1825, he never had fewer than twenty-one students in Scots law and never more than forty-nine⁵⁰. Numbers remained low in Civil law, however, and after 1819 he seems to have decided not to teach it unless he had at least five students⁵¹. Whereas Davidson's maximum of forty-nine students might seem a good number in comparison with the size of classes in the middle of the eighteenth century, when, for instance, John Erskine in Edinburgh, the leading Professor of Scots Law in his day, had classes varying in size from thirty-one to forty-six between 1763 and 1765⁵², in the first quarter of the nineteenth century this was no longer so. Thus, between 1801 and 1825 there were never less than twenty-one students and never more than fifty-two in Civil law in the University of Edinburgh, and numbers in Scots law varied between ninety and 257⁵³. The contrast with Davidson's classes in Glasgow is striking.

Given that the bulk of the students whom Davidson attracted probably took

46. He had copied out his father's lecture notes on government and Scots law: see J. W. Cairns, *John Millar's Lectures on Scots Criminal Law* (henceforth Cairns, *Millar's Lectures*), Oxford Journal of Legal Studies, 8 (1988), 364-400 at p. 370-371 n. 33. In that footnote, I suggested that it was unlikely that James Millar had attended his father's lectures as a student. This was wrong, as GUA 26680, p. 49 shows. I stand by the other comments, however, in that note, and I remain convinced that GUL, MSS Gen. 289-291 and MS Gen. 1078 are not student notes but copies by James Millar of the notes from which his father lectured.

47. GUA 26696, p. 388.

48. *Ibid.*, p. 376 (29 Nov. 1805).

49. *Evidence ... Volume II: University of Glasgow*, p. 527. Curiously enough, he only advertised classes on the *Institutes* and the *Digest* in the Glasgow Herald, 29 Sept. 1806.

50. *Evidence ... Volume II: University of Glasgow*, p. 527. For his advertisements, see Glasgow Herald, 2 Oct. 1807, 26 Sept. 1808, 22 Sept. 1809, 24 Sept. 1810, 16 Sept. 1811, 25 Sept. 1812, 20 Sept. 1813, 30 Sept. 1814, 29 Sept. 1815. His particular courses are not thereafter noted. In all these years he advertised courses on the *Institutes*, the *Digest*, and (except for 1808 when he none the less taught it) Scots law.

51. The statistics in Roman law were, 1807-1808: 5; 1808-1809: 4; 1809-1810: 3; 1810-1811: 1; 1811-1812: 0; 1812-1813: 6; 1813-1814: 1; 1814-1815: 0; 1815-1816: 6; 1816-1817: 12; 1817-1818: 0; 1818-1819: 4; 1819-1820: 0; 1820-1821: 0; 1821-1822: 11; 1822-1823: 0; 1823-1824: 0; 1824-1825: 0; 1825-1826: 0. See *Evidence ... Volume II: University of Glasgow*, p. 527, and, for his change of policy, *ibid.*, p. 146.

52. EUL, (MS) Matriculation Roll of the University of Edinburgh, Arts-Law-Divinity. Transcribed by Dr. Alexander Morgan 1933-1934 (3 vols.), vol. i, fos. 256-257, 262, 268-269.

53. *Evidence ... Volume II: University of Edinburgh*, appendix, p. 130-131 (this gives no students for 1811-1812 for either Civil or Scots law, but the matriculations listed in *ibid.*, p. 128 show that there were plenty of students, so I have discounted this year in giving student figures).

his class because of the Faculty of Procurators' requirement that apprentices attend a course of lectures on Scots law, it is small wonder that he expressed the wish that they should also require attendance in Civil law. His class numbers should also be placed in the context of a doubling of admissions to the bar in this period—between 1802 and 1806 thirty-seven men were admitted to the Faculty of Advocates, while between 1822 and 1826 eighty-nine men were admitted. The numbers had been progressively increasing in the intervening years⁵⁴. This growth in the number of advocates must have been part of an increase in recruitment to the legal profession as a whole. In Glasgow in particular, as the town grew in this period into a major commercial and industrial centre, the number of writers and procurators must have been expanding. Davidson was thus failing to capture a significant share of a growing demand in Scotland for legal education.

II

If the initial disappearance of students of law from Glasgow in the first years of the nineteenth century did not follow a significant decline in numbers under Millar, it is necessary to explain why Davidson was so spectacularly unsuccessful, and why he ultimately attracted only local apprentices. To do so requires, first, examination of how he came to gain the chair and why he wished to have it, before, secondly, consideration of the evidence of his teaching.

There can be little doubt that Davidson gained the chair because he was the son of the Principal, Archibald Davidson. This in itself is no indication that he was likely to be unsuited for the office. Such family connections were commonplace in the Scottish universities⁵⁵. It is interesting to note, however, that Professor Jardine was approached by some of his colleagues about the possible candidature of his own son when the post became vacant on Millar's death. As well as indicating the significance of kinship in appointments, this is important because of Jardine's response. He did not wish his son to seek the chair: 'None who like the Bar and have any prospect of rising there could be tempted by it'⁵⁶. This suggests that Davidson sought the chair because he was a man with no prospects at the bar, for whom a small academic salary and sparse student fees would be attractive. Davidson's life to the time of his presentation to the chair is instructive in this respect.

Born in 1768, Davidson studied Scots law in Edinburgh with William Wallace in 1785⁵⁷. He matriculated in Glasgow in 1788, most likely to help prepare for

54. N. Phillipson, *The Scottish Whigs and the Reform of the Court of Session 1785–1830*, Edinburgh 1990, p. 189.

55. See, e.g., David Murray, *Memories of the Old College of Glasgow: Some Chapters in the History of the University*, Glasgow 1927, p. 247, n. 1.

56. Jardine to Hunter, 16 July 1801, GUL, MS Gen. 507/118.

57. Edinburgh Matriculations (n. 52 *supra*), vol. ii, fo. 446. Comparison of the actual signature in the original register in Edinburgh with that of Davidson in the relevant album at Glasgow (GUA 26678, p. 229) confirms that this is the future professor at Glasgow. For his date of birth, see W. Innes Addison, *A Roll of the Graduates of the University of Glasgow from 31st December 1727 to 31st December 1897 with short biographical notes*, Glasgow 1898, p. 144.

his private examination in Civil law for admission to the Faculty of Advocates. This examination probably took place in the Summer of 1789⁵⁸. This choice of university would have been dictated by his father's appointment as Principal in 1785. Dr. Paton states that Davidson studied with Hume in Edinburgh in 1789–90 and 1790–91⁵⁹. Since Davidson was admitted as an advocate on 6 July 1790, it is unlikely—though possible—that he studied with Hume in the second of these two academic sessions⁶⁰. The year between the private trial in Civil law and admission was normally devoted to the study of Scots law in preparation for the trial in that subject⁶¹. It is always possible that Davidson attended Hume's class in 1789–90 to assist his study, without his name appearing in the records of Hume's classes; on the other hand he may have remained in Glasgow, as 1789–90 was one of the years in which John Millar taught Scots law⁶². Supporting this latter view is the fact that another Davidson can be traced as studying with Hume in these two academic sessions. Paton's comment (for which unfortunately he gives no reference) seems likely to be based on a misidentification of this Davidson as Robert Davidson⁶³. Lehmann certainly described Robert Davidson as Millar's pupil⁶⁴. Davidson married in 1794⁶⁵; if he was unsuccessful at the bar, it is easy to see that, approaching his mid-thirties with a family to support, the position at Glasgow, even with its slim pickings, would have been attractive, especially since he could presumably be easily shoe-horned into it.

Jardine may not have wished his son to be a candidate for the chair, but he took the view that in any case his son would not have obtained it because of the opposition of the Chancellor, the Duke of Montrose⁶⁶. Davidson was appointed during the last years of Henry Dundas's long ascendancy in Scottish politics. Dundas indeed had served as Rector of the University of Glasgow in 1781–82. Given that the chair was under royal patronage, Dundas or his supporters will have exerted influence in the appointment. In contrast to some earlier dispensers of patronage such as the Earl of Ilay or the Earl of Bute, Dundas seems to have been less concerned with the promotion of merit: political allegiance was what

58. *The Matriculation Albums of the University of Glasgow from 1727 to 1858*, ed. W. Innes Addison, Glasgow 1913, p. 154; GUA 26678, p. 229; National Library of Scotland, Minute Book of the Faculty of Advocates, 1783–1798, F.R. 3, p. 100–101.

59. G.C.H. Paton, *Biography of Baron Hume*, in *Baron Hume's Lectures 1786–1822*, ed. G.C.H. Paton, 6 vols., Edinburgh 1939–1959, vol. vi, p. 327 at p. 411.

60. *The Faculty of Advocates in Scotland, 1532–1943, with Genealogical Notes*, ed. F.J. Grant, Edinburgh 1944, p. 52. John Jardine attended Hume's lectures after admission as an advocate: Jardine to Hunter, 13 Mar 1801, GUL, MS Gen. 507/116. Grant gives Davidson's date of birth as 1763 rather than 1768; this is probably a printing error.

61. J.W. Cairns, *The Formation of the Scottish Legal Mind in the Eighteenth Century: Themes of Humanism and Enlightenment in the Admission of Advocates*, in N. MacCormick and P. Birks (eds.), *The Legal Mind, Essays for Tony Honoré*, Oxford 1986, p. 253–277 at p. 264–265.

62. *Glasgow Mercury*, 13/20 Oct. 1789; *Glasgow Advertiser and Evening Intelligencer*, 16/19 Oct. 1789.

63. See EUL, MS Da. 1.42, fo. 150v: 'Gul. Davidson' (1789) and fo. 178v: 'Gul. Davidson' (1790). This is a register of payments for the Library. Neither William Davidson nor any other Davidson appears in the Matriculation albums for these years as a student of Hume.

64. Lehmann, *John Millar of Glasgow*, p. 37.

65. *Faculty of Advocates* (n. 60 *supra*), p. 52.

66. Jardine to Hunter, 16 July 1801, GUL, MS Gen. 507/118.

was of paramount importance⁶⁷. Thus, the appointment of Davidson's father as Principal was attributed to the interest of the Lord Advocate, Ilay Campbell, a Dundas supporter, 'the great conductor of such Jobs', who was the local M.P.⁶⁸. When William Taylor was appointed Principal in 1802, Professor Jardine remarked: 'This nomination like some others of late have heed of persons Loyalty rather than Literary merit or Character'⁶⁹. This presumably applied to Davidson and explains largely why he gained the chair. It is difficult to believe that anyone would have been able to write of a man supported by Lord Ilay as Henry Brougham did thus six days after Millar's death in a letter to James Loch: '[T]hey mean to give poor J. Millar's class to that stupidest of all brutes Robt. Davidson'⁷⁰. That Brougham was a remarkably unpleasant and arrogant man does not deny this comment all force. Clearly Davidson did not sparkle intellectually.

The date of Brougham's letter was also the date of the first official notification of Millar's death to the Faculty. This shows that Davidson's father and supporters planned and managed his appointment efficiently and swiftly, with the dispatch typical for regius chairs, even if the position seemed unattractive to others⁷¹. As well as forestalling rivals, swift action was no doubt necessary in order to ensure that someone was presented to the chair in time for the coming academic year. Davidson's presentation was accordingly delivered to the Faculty on 30 July who appointed for his trial the reading on 6 August of a Latin dissertation *De lege Julia majestatis*. On that date, he read his dissertation, took the necessary oaths, and was admitted to the office⁷².

III

Turning to the issue of Davidson's teaching, we find that a number of sets of notes taken by students survive from his lectures on Scots law, giving a picture of his classes in that subject over the period with which we are concerned⁷³. A first point to consider is that Davidson's course was very heavily influenced by that of David Hume in Edinburgh. While it is always possible that he may have

67. Roger L. Emerson, *Professors, Patronage and Politics: The Aberdeen Universities in the Eighteenth Century*, Aberdeen 1992, p. 100. Michael Fry, *The Dundas Despotism*, Edinburgh 1992, defends Dundas from many of the criticisms made of him; he does not directly address the issue of university patronage, however, and nothing written there suggests a need to revise Emerson's views on this point.

68. Jardine to Hunter, 1 Dec. 1785, GUL, MS Gen. 507/82; Lewis Namier and John Brooke, *The House of Commons 1754-1787*, 3 vols., London 1964, vol. 1, p. 505-506, vol. ii, p. 184.

69. Jardine to Hunter, 22 Sept. 1803, GUL, MS Gen. 507/125.

70. Henry Brougham to James Loch, 5 June 1801, *Brougham and his Early Friends: Letters to James Loch, 1798-1809*, ed. R.H.M. Buddle Atkinson and G.A. Jackson, 3 vols., London 1908, vol. 1, p. 275. This is not to deny that Ilay had some failures: see e.g., Cairns, *William Crosse* (n. 12 *supra*). These took place, however, in special circumstances.

71. GUA 26696, p. 47 (5 June 1801).

72. *Ibid.*, p. 54-56, 56-57.

73. GUL, MSS Gen. 1045/1-3 (1807-1808); GUL, MSS Murray 340-341 (1817-1818); GUL, MS Gen. 472; GUL, MSS Gen. 323-324 (1821-1822); GUL, MSS Murray 275-276 (1827-1828) (not all of these are complete).

studied with Hume, it is more likely that he simply procured a copy of Hume's lectures, notes of which circulated widely in Scotland at this time. However this may be, Davidson adopted Hume's variation on the structure of Millar's lectures (reversing Millar's treatment of personal and real rights)⁷⁴. He told his class: 'This method is now followed by Mr. Hume Professor of Law in the University of Edinburgh to whom I lie under very great obligations'⁷⁵. And the structure of Davidson's lectures followed very closely, though not identically, that of those of Hume and Millar⁷⁶. For example, he included a brief account of criminal law as had done the latter but not the former, who treated it in a separate summer course⁷⁷. Davidson's course is three times the length of that of Millar on Scots law, if not quite reaching the extent of that of Hume⁷⁸. It should be stressed, however, that despite the strong influence of Hume, Davidson's course is not a simple copy of his, although the same topics are covered in much the same order and much the same cases are cited⁷⁹.

Qualitative assessment of Davidson's classes on Scots law is difficult. Reading of the student notes suggests his course of lectures was somewhat plodding. Later David Murray fairly assessed the classes as 'commonplace and dull'⁸⁰. There is none of Millar's interest in theoretical issues and penetrating philosophical and historical insight. Instead there is a routine and unexciting journey through the relevant cases and statutes. In this, of course, Davidson's classes rather resemble those of Hume in Edinburgh. James Brougham could comment to a friend in 1802: 'The excellency of Hume's course is acknowledged by everybody, but this excellency consists chiefly, I may say only, in his arrangement of the decisions'⁸¹. More disparagingly, Thomas Carlyle and others could find Hume's lectures tedious and frustrating⁸². It is difficult to believe, however, that anyone could have written of Davidson's lectures as Walter Scott did of Hume's, describing the Edinburgh professor with enthusiastic warmth and some justice as having been 'an architect ... to the Law of Scotland'⁸³. Hume's genius makes Davidson's similar lectures appear a distinctly pedestrian affair; given that they were heavily influenced by those of Hume—a lesser, derivative version so to speak—it is perfectly understandable that students preferred to go to the greater originals in Edinburgh, unless there were pressing reasons—such as apprenticeship—tying them to Glasgow. Hume resigned the chair in Scots law in 1822, but his successor George Joseph Bell was also a man of considerable dis-

74. Cairns, *Millar's Lectures*, p. 396-397.

75. GUL, MS Murray 340, p. 7.

76. See Appendix A for a comparative outline of Millar's, Hume's, and Davidson's Lectures on Scots Law.

77. Cairns, *Millar's Lectures*, p. 395-400.

78. In 1817-1818 Davidson gave 141 lectures. Millar generally aimed at 50. See Cairns, 'Famous as a school for Law, as Edinburgh ... for medicine', p. 142-143.

79. Compare, e.g., GUL, MS Gen. 1045/1, fos. 1r-10r with *Hume's Lectures* (n. 59 *supra*), vol. ii, p. 125-142.

80. Murray, *Memories of the Old College of Glasgow* (n. 55 *supra*), p. 228.

81. James Brougham to James Loch, 25 Apr. 1802, in *Brougham and his Early Friends* (n. 70 *supra*), vol. i, p. 328.

82. Paton, *Biography of Baron Hume* (n. 59 *supra*), p. 405-406.

83. *Scott on Himself: A Selection of the Autobiographical Writings of Sir Walter Scott*, ed. D. Hewitt, Edinburgh 1981, p. 42.

tinction with whom Davidson obviously found that he could not really compete⁸⁴. That Bell was so successful is particularly telling against Davidson, as, no matter how distinguished a scholar, Bell was reputed a poor teacher whose students were inattentive⁸⁵. Moreover, as a younger man he had suffered from troubles due to his Whig political views⁸⁶. Even so, his classes ranged in size between 240 and 128 over 1823 to 1830⁸⁷. This was very respectable, especially since from 1825 Bell faced competition from Macvey Napier, in the newly erected professorship of Conveyancing, who attracted 110 students in 1825–26 and 152 in 1827–28, and who was known as a clear and attractive lecturer⁸⁸.

Alexander Irving held the chair of Civil Law in Edinburgh from 1800 to 1826. Though presumably a competent teacher and an able enough man (he was made a judge in 1826), there is nothing to suggest that he was the type of striking, innovative teacher that Millar had been⁸⁹. His lectures on the *Institutes*, for example, were competent, but somewhat dry, expositions of Heineccius's *Elementa iuris civilis secundum ordinem institutionum*⁹⁰. Davidson, however, was unable to exploit this situation to build up a class by capitalising on the fame Millar had brought to the study of Roman law in the University of Glasgow, and thus failed to take advantage of the fact that the Edinburgh Professor of Civil Law was not a civilian equivalent of Hume or Bell.

No notes taken by students in Davidson's classes on Roman law survive. There are, however, indications of what his teaching must have been like. Glasgow University Library possesses a copy of the eight-volume Geneva edition of Heineccius's *Opera omnia*⁹¹. This particular copy was in the Library by 1791⁹². The fifth volume, which includes Heineccius's compendium of the *Institutes*, contains pencil notes in two hands which suggest that lectures were being delivered from it on the *Institutes* in 1815–16 and 1816–17, to the six students in Civil law in the first of these sessions and to the twelve in the next⁹³. There are some annotations to the section of the volume containing Heineccius's compendium of the *Digest*; it is impossible, however, to confirm that they are for teaching, and they are far fewer than those relating to the *Institutes*⁹⁴. One of the two

84. A. Grant, *The Story of the University of Edinburgh during its First Three Hundred Years*, 2 vols., London 1884, vol. ii, p. 373–375.

85. T.St.J.N. Bates, *Mr. M'Connachie's Notes and Mr. Fraser's Confessional*, Juridical Review, 1980, 166–184 at p. 175–176.

86. Phillipson, *The Scottish Whigs* (n. 54 *supra*), p. 144, 152–156.

87. *Evidence ... Volume I: University of Edinburgh*, appendix, p. 131.

88. Grant, *University of Edinburgh* (n. 84 *supra*), vol. ii, p. 376–377; *Evidence ... Volume I: University of Edinburgh*, appendix, p. 131; Bates, *M'Connachie's Notes* (n. 85 *supra*), p. 175–176.

89. Grant, *University of Edinburgh* (n. 84 *supra*), vol. ii, p. 366.

90. See EUL, MSS Gen. 1389–1390.

91. J.G. Heineccius, *Operum ad universam iuris prudentiam, philosophiam et literas humaniores pertinentium [tomi octo]*, Geneva 1744–1748, GUL pressmark B19-f.10-17.

92. A. Arthur, *Catalogus impressorum librorum in bibliotheca universitatis Glasguensis, secundum literarum ordinem dispositus*, Glasgow 1791, p. 207 col. a.

93. Heineccius, *Operum ... tomus quintus, in quo elementa iuris civilis secundum ordinem Institutionum et Pandectarum, commoda auditoribus methodo adornata*, GUL pressmark B19-f.14; see *ibid.*, p. 262 for the dates of the sessions.

94. The only suggestion that the notes may relate to classes on the *Digest* is on Heineccius, *Elementa iuris civilis secundum ordinem ... Pandectarum*, in *Operum ... tomus*

hands is possibly that of Davidson, the other is probably that of a William Davidson whose signature appears on several pages⁹⁵. This latter may be Davidson's son who certainly was later to read his father's lectures to his class⁹⁶. Perhaps he helped his father in some way in 1816–17, although he would have been quite young. However all this may exactly be, the annotations show that Davidson and perhaps an assistant or substitute were teaching Roman law to the Glasgow students in these two academic years from Heineccius's compendium. The notes themselves have little juridical content, but consist, first, of trivialities tracing the class's progress through the text. A few examples will suffice to give their flavour: 'Begun on Monday 25th Novr. 1816 my second session'; 'Mr Shaw not present'; 'Begin on Monday Decr Ist'; 'Begin on Friday 13th Decr'; 'no examin[atio]n'; 'There being no examination on the sections read this day the examin[atio]n which begins at Sect. [blank]'⁹⁷. Secondly, there are annotations which indicate that part of the text was omitted, often because it dealt with the *usus hodiernus*: 'Omitted Modern German Law'; 'omitted'⁹⁸. Thirdly, there are marginal comments which simply indicate the content of a section, often being merely a translation of the printed marginal note from Latin: '2 ways of acquiring paternal power'; 'In this section the real contracts known in the Roman law are ment[ione]d'; 'This section mentions those who can constitute mutuum', 'requisites of the hire'; 'The power which the Emphyteuta had over the subject'⁹⁹. Finally, a number of the notes make some substantive point about the law, usually of a most banal nature¹⁰⁰. Some of the annotations may relate to examina-

quintus, p. 275: 'Begin on Monday'. On its own this merely confirms that someone was making his way through the text for some purpose; given the frequency with which the name William Davidson is found in this section of the volume (see note 95 *infra*), once with a date in February, 1817 (*ibid.*, p. 315), it was probably he. There are other curious notes, such as the aide-memoire in *ibid.*, p. 201: 'I neglected to give the Gaslight Bill to [illeg.] the Day before yesterday 28 April 1817'; 'Ha Ha Civil Law' in *ibid.*, p. 108; and the Lord's prayer on *ibid.*, p. 291 (also found in part in *Elementa iuris civilis Institutionum*, in *ibid.*, p. 331 (deleted)).

95. There are ink notes on the *Elementa iuris civilis secundum ordinem . . . Pandectarum* which are fairly certainly in the hand of Robert Davidson. Comparison of the signatures in the volume with that of William Davidson in the Matriculation Album (GUA 26679, fo. 19r) tends to confirm that it was he who signed his name over and over again in the volume. In the *Elementa . . . secundum ordinem . . . Pandectarum* in *ibid.*, we find on p. 163 the name 'Robert Davidson 1788' and on p. 334 the same name three times, twice with the date 1788. This is the date the future Professor matriculated in Glasgow. The name on its own occurs in *ibid.*, p. 645, while 'Robert' on its own is found a number of times. The signature is not his, however, either of that date or later. In fact it looks to be written by William Davidson, who among other versions of his name wrote on *ibid.*, p. 315: 'W. Davidson College Glasgow 21st February 1817'; and such was his obsession that on D. 38,10 *De gradibus et adfinibus et nominibus eorum* (*ibid.*, p. 561), he wrote: 'Et ego vero Gul. David.'

96. J. Coutts, *A History of the University of Glasgow from its Foundation in 1451 to 1909*, Glasgow 1909, p. 390.

97. Heineccius, *Elementa iuris civilis secundum ordinem Institutionum*, in *Operum . . . tomus quintus*, GUL Pressmark B19-f.14, p. 19, 23, 49, 193, 215.

98. Heineccius, *Elementa iuris civilis secundum ordinem Institutionum*, in *ibid.*, p. 61, 87.

99. Heineccius, *Elementa iuris civilis secundum ordinem Institutionum*, in *ibid.*, p. 36, 208, 209, 239, 242.

100. See Appendix B.

tions (that is, the quizzing of students on past lectures) rather than to the actual lectures; but it is evident that many of them are for use in lectures¹⁰¹. These annotations none the less are important, despite their vacuity, because they demonstrate that whoever was teaching was doing so directly from this volume and apparently without further notes. He could only have been reading and glossing the text. Such simple exposition of an elementary text was far removed from Millar's intellectually innovative and advanced teaching. While Millar related his account of the law to issues of philosophy and history, these notes show that the lecturer omitted the first two titles of the *Institutes*, those *De iustitia et iure* and *De iure naturae, gentium et civili*, and simply plunged into an exposition of the substantive law ignoring all theoretical issues. If this indicates a lack of concern with legal theory, the entire fourth book seems not to have been the subject of classes, for reasons less easy to explain, because, although the lecturer elsewhere seems to have preferred to emphasise titles having a bearing on modern law, this would not account for omitting book four¹⁰². The notes generally suggest a laziness about preparing for the classes on Civil law. The standard cannot have been high. It is easy to see that students would not have found such an approach attractive.

IV

Craig wrote in 1806 that '[f]rom the absence of the higher Courts of Justice, Glasgow lies under many obvious disadvantages, as a school of law'¹⁰³. This inherent unattractiveness, certainly to Scots, of studying law in Glasgow, correspondingly meant, given the reliance on student fees for a significant part of a professor's income, that the chair of Civil Law in Glasgow was not necessarily a desirable office. To overcome student reluctance to study law in Glasgow, and hence make the chair more remunerative, it was necessary for the professor to be particularly able and energetic as a teacher. Davidson evidently was not. That there was only one chair in law was a further problem. Only if a professor were able and willing to make Millar's efforts could anything approaching the type of curriculum desired by law students be offered. Yet, the fact remains that Millar showed legal education to be viable at Glasgow given the right professor. The comparative failure of the Glasgow law school after 1801 must thus be largely attributed to Davidson; at the very least, it should be acknowledged that he contributed significantly to its decline. Despite the delay in introducing the promised course in Scots law and in teaching the course on the *Digest*, it is, however, difficult simply to dismiss Davidson as lazy and unwilling to put effort into his teaching. Even if prejudiced, Brougham's remark on Davidson's quality is impossible to ignore, indicating that Davidson's lack of success may have been due

101. Thus, there are notes on *emphyteusis* in Heineccius, *Elementa iuris civilis secundum ordinem Institutionum*, in *Operum . . . tomus quintus*, GUL Pressmark B19-f.14, p. 241-243 but at p. 241 is noted 'No examination on this title'; likewise at p. 77 is written 'No examination on this title as it is not of much importance no person in England or Scotland being compelled to accept of the office of a tutor or Curator'.

102. Heineccius, *Elementa iuris civilis secundum ordinem Institutionum* in *ibid.*, p. 19, 17, 262.

103. Craig, *Life and Writings of John Millar*, p. xi.

to lack of ability rather than straight forward idleness. Furthermore, Jardine's remark about the unattractiveness of the chair suggests Davidson sought it because he lacked the ability and stamina to succeed at the bar, where, in contrast to Jardine's son, he was politically very acceptable. In this respect it is important to examine Davidson's activities as Professor of Civil Law.

All the previous Professors of Civil Law—except for Crosse the sinecurist—had participated in the general administration of the University, and Millar had certainly been much involved in the University's legal business¹⁰⁴. All this was standard practice in the University, which was a largely self-governing corporation with a small number of professors. With Davidson, however, there is a qualitative change. In 1804 the Faculty delegated to him 'a general superintendence of their business in so far as relates to their Revenue; and in an especial manner to valuations of Teinds'¹⁰⁵. This work evidently occupied a great deal of Davidson's time¹⁰⁶. He was suitably recompensed for it each year at sums of from thirty to sixty guineas¹⁰⁷. Once, he was allowed to use £ 30 of the money he had recovered from discovering unpaid teinds to purchase books on English law for the Library¹⁰⁸.

Davidson was obviously a useful and competent administrator. As he had only one student in 1803–4, and none in 1804–5, delegating to him the collection of the University's revenue was obviously a sensible use of his time, allowing him to contribute to the general running of the institution, if in an untypical way for a professor¹⁰⁹. It used the skills that he had. He also appears to have given up collecting the teinds sometime after 1811, when the numbers of his students in Scots law started to increase significantly.

Yet, Davidson and his colleagues evidently felt his position to be unfortunate.

104. Forbes acted as Dean of Faculty, Minutes of University Meetings, 1730–1749, GUA 26639, p. 21 (26 June 1732), and Quaestor, Minutes of Meetings of Faculty and Dean of Faculty's Meetings, 1732–1768, GUA 26645, p. 11 (26 June 1736). Lindsay served in the same two offices: GUA 26634, p. 76, (26 June 1753) and p. 92 (26 June 1758). Millar served as Quaestor, Minutes of Meetings of Senate, 1771–1787, GUA 26686, p. 68 (10 June 1773), Clerk of Faculty, Minutes of Meetings of Faculty, 1771–1776, GUA 26690, p. 76 (10 June 1772), Clerk of the Comitia, Minutes of Meetings of Senate, 1771–1787, GUA 26686, p. 55 (15 Nov. 1772) and was appointed by Andrew Stewart as his vice-rector, GUA 26686, p. 171 (9 June 1778). Millar was much involved in the University's legal affairs and other general business. Many traces can be found of his work in Glasgow University Archives. See, e.g., GUA 10025 (on a conveyancing problem), GUA 5154 (consulted on litigation initiated by Professor Anderson against his colleagues), GUA 11553 (draft letter concerning the building of the Hunterian Museum). He was also involved in consultations with Balliol College about the Snell Exhibition: GUA 26690, p. 263 (12 Nov. 1774), GUA 26694, p. 228 (18 Apr. 1792), p. 229–230 (27 Apr. 1792), and p. 266 (6 Nov. 1792).

105. Davidson to James Balfour, 22 Mar. 1804, in Letter Book of Professor Davidson, Professor of Law. 22 Mar. 1804–22 May 1808, GUA 23473, p. 1.

106. See, e.g., *ibid.* *passim*, and Professor Davidson's Letter Book No. 2 relative to the affairs of the College from 22 Mar. 1808 to 30th April 1810, GUA 17038.

107. Minutes of Meetings of Faculty 1806–1813, GUA 26697, p. 1–2 (9 June 1806): 'professional fee'; p. 36 (17 Mar. 1807); p. 57 (3 June 1807): 30 guineas; p. 222 (20 July 1808): £ 47.5.0d; p. 343 (4 Mar. 1811): 60 guineas. (See also GUA 58353: detached minute authorising payment to Davidson).

108. GUA 26697, p. 379 (10 Mar. 1812).

109. Some of the tedium involved in this administration can be grasped from, e.g., C. Stirling to J. Dundas, 11 June 1808 inclosing copy letter of J. Davidson W.S. (on whom see below) to R. Davidson, 3 June 1808, EUL, MS Dk. 7.47/51.

In 1803–4, for example, he was anxious to be appointed Town Clerk of Glasgow¹¹⁰. Moreover, that Davidson spent so much time as a collector of the University's revenue because he had few or no students must have made a painfully obvious contrast with Millar's position as a successful and famous professor who attracted students from throughout the British isles and even from abroad. In a Faculty deeply divided by politics, Davidson's position would accordingly have often been unpleasant. In this respect, it is worth noting that in one of the years in which Davidson had no students a dispute arose within the Faculty over the appointment of an agent in Edinburgh. Two men were considered. One was Archibald Millar, W.S., 'son to our late Colleague Mr Millar Professor of Laws in this University', and the other was James Davidson, W.S., who was Robert Davidson's cousin. James Davidson was elected on 18 November 1805 on the casting vote of the Principal, William Taylor¹¹¹. Four members of the Faculty protested over this use of the Principal's casting vote. Prominent among the reasons for their dissent was that Davidson's appointment was 'a departure from that old and Kindly practise, which, so far as is known to the Dissentients, has been constantly observed by this Society' to give preference for this type of office to the son of a professor. The dissent eulogised John Millar:

[W]ho, during the long period of forty years, discharged the duties of that profession with uncommon ability and industry, and by his strenuous exertions, raised the law department of Education in this College to a degree of celebrity unknown in any former time: and whose zeal for the interests of this Society disposed him at all times to give such professional advice and assistance as its business from time to time required¹¹².

For a successor who currently had no students, and who was being specially paid to collect the University's teinds, this minuted dissent to the appointment of his cousin as University agent cannot have been pleasant reading. It must have seemed an implicit criticism, as it indeed may well have been intended. Davidson's colleagues were willing to attribute the failure of legal education in Glasgow to his lack-lustre performance and apparent intellectual mediocrity.

It was certainly very much Davidson's fate and misfortune to be regarded as the undistinguished successor to a great and famous man. Thus, in an account of the University in 1825, he was simply noticed as having 'succeeded that accomplished scholar, and excellent man, John Millar'¹¹³. There was obviously some sensitivity on this issue, since at least one reader and correspondent construed this as slighting Davidson, though his defence of him was notably silent on

110. *James Reddie, LL.D.*, *The Law Review, and Quarterly Journal of British and Foreign Jurisprudence*, 17 (1853), 63–69 at p. 65–66.

111. GUA 26696, p. 370–371; on James Davidson being Davidson's cousin, see *Historical Sketch of the Glasgow Society of the Sons of Ministers of the Church of Scotland*, 5th ed., Glasgow 1910, p. 31–32, showing that the Rev. Robert Davidson of Crawfordjohn was the father of Principal Archibald Davidson and of Rev. John Davidson of Old Kilpatrick, the latter being the father of James Davidson, W.S.

112. GUA 26696, p. 374–375 (25 Nov. 1805). Note that 'Kindly' in this context relates to 'kinship'.

113. *Notice of the University of Glasgow – Its Professors and Students*, *The Edinburgh Magazine, and Literary Miscellany; a New Series of the Scots Magazine*, 16 (May 1825), 513–523, at p. 515.

Davidson's merits as a scholar and teacher¹¹⁴. Likewise, Millar was described as follows in the *Caledonian Mercury* in the summer of 1827:

Celebrated as an author at a time when our country was singularly fertile in great writers, this eminent person acquired a still more enviable reputation as a teacher of law, and by the united force of genius, talents, and indefatigable perseverance, raised himself to the very highest place amongst modern *Antecessores*.

The comment on Davidson was that '[t]he present Professor may not be, in all respects, equal to any of these distinguished men [Millar, Lindesay, Hutcheson, and Carmichael]', though it was conceded that he was 'fully adequate to the duties of his office' which were believed to be 'very faithfully discharged'¹¹⁵. Such faint praise was especially damning.

If the opinion of Davidson's contemporaries was that he was intellectually mediocre, his own work does little to dispel that view. As we have seen, his courses were not impressive. His one published contribution to his discipline is *A Short Exhibition of the Poor Laws of Scotland*. Including the title page, it is a tiny pamphlet of twelve pages, eight of which merely contain extracts from other works and relevant legislation. Davidson's contribution is a preface, two pages of queries and answers, and a paragraph setting out the steps for applying for poor relief. All that the work really testifies to is Davidson's humanity¹¹⁶. It is a very tiny achievement indeed when set beside David Hume's *Commentaries on the Law of Scotland, Respecting Crimes*, or Millar's *Origin of the Distinction of Ranks and Historical View of the English Government*. In contrast with the 'speculative' Millar, the 'practical' Davidson had had even less to say to the world than he had to his students. His was an infertile mind. And it was the comparable reduction of teaching to the 'practical' from the 'speculative' that his intellectual insufficiency engendered that did much to destroy the reputation of the University of Glasgow as a school of law.

V

Davidson's poor performance ended an astonishing development begun in 1714 with the appointment of William Forbes as the first Professor of Civil Law in the University of Glasgow¹¹⁷. From that date we can see the growth of legal education in Glasgow in a way that made it for a brief forty years the outstanding exemplar of enlightened excellence in studies in law in the British Isles. It was

114. *Ibid.*, 16 (June 1825), 647-651 at p. 648.

115. J. Browne, *Remarks on the Study of the Civil Law; occasioned by Mr. Brougham's Late Attack on the Scottish Bar*, Edinburgh 1828, p. 34-35 (containing Browne's articles from the *Caledonian Mercury*).

116. *A Short Exhibition of the Poor Laws of Scotland, And the Method of Applying for Relief from the Parish, Drawn from Authentic Documents. To which is added, the Answers to Five Queries, relative to the Rights of the Poor*, by Mr Robert Davidson, Professor of Law, College of Glasgow, 3rd edn., Glasgow 1816. I have failed to discover a copy of any earlier edition.

117. The remarks in this paragraph derive from the articles cited in note 12 above.

undoubtedly correct that the law school of Edinburgh was the most advantageously situated in Scotland. Moreover, it had the inestimable benefit for the institutional maintenance of legal education of possessing separate chairs of Civil Law and Scots Law, and additional chairs, first, of Public Law and the Law of Nature and Nations, and, secondly, of Universal History and Greek and Roman Antiquities (even if these latter two were not always successfully in operation). It was thus easier not only to offer a broad curriculum in Edinburgh, but also to sustain a viable school when one of the professors was mediocre or poor. Yet, Millar's tenure of the Glasgow chair showed what could be done there when the correct man was chosen. Forbes seems only to have been successful in a small way, as does Hercules Lindesay, the third professor to hold the chair; if they did not attract many students (they certainly never had Davidson's numbers in Scots Law, but in the context of their time they were probably doing not too badly), they at least showed what could be done, if the right man were appointed, and they managed to establish Glasgow as a centre for liberal education in law through their teaching of Roman law, even if they were never successful in the way that their contemporaries at Edinburgh were. But the appointment of the right man was always going to be the crucial issue given the University of Glasgow's situation and its institutional disadvantage of possessing only a single chair in law. Given that appointments at Glasgow were very open to outside political influence, patronage was always important in assuring a suitable man was presented by the Crown to the chair. The Faculty themselves played no small part in securing the appointment of Forbes, Lindesay, and Millar (indeed they were allowed by the Crown to elect Forbes themselves) through deft consultation with and solicitation of patrons such as Ilay and Bute who were themselves men of education and marked scholarly and scientific interests, and who evidently favoured intellectual merit, promise, and achievement in brokering appointments to chairs. It is notable that William Crosse, who turned out to be a sinecurist and a disaster, was foisted on the University in the face of the concerted opposition of the Faculty—deeply divided though they were by politics—by a reluctant Ilay, against his better judgment, in a time of political crisis when he could not resist a pressing demand for favours. Such success as Forbes and Lindesay had and Millar's phenomenal success were related to their intellectual concerns and achievements. Forbes and Millar established reputations as authors. All three had marked interests in virtuoso and scientific and polite knowledge generally; for them, law was just one part of an encyclopaedia of knowledge. Millar certainly taught it as such. In contrast, Davidson was appointed by a regime less concerned with merit; he had a restricted view of his function and was mediocre as a teacher. From being a centre of élite and 'speculative' education in law, the University of Glasgow thereby became the dispenser of a narrow, technical, and 'practical' education that was of interest only to the apprentices of local practitioners. Davidson did not even succeed in attracting in significant numbers the apprentices of provincial lawyers from other areas, who generally preferred to go to Edinburgh, when they could as easily have gone to Glasgow. There was nothing in Glasgow to attract other than local apprentices. The great days thereby came to an end. Jardine's prophecy in July 1801 that

'[t]he Study of the law will for the future be transferred to Edinburgh', proved all too accurate¹¹⁸.

VI

A year after Davidson had been questioned by the Royal Commission, the Senate of the University of Glasgow unanimously resolved to confer on him the degree of LL.B.¹¹⁹ Some months later, the Senate received the Commission's provisional resolutions. They were first considered on 16 December 1828¹²⁰. The Commission proposed a curriculum for law extending over three sessions. In the first year, Civil Law would be taught two hours every day—one employed in lecturing, the other in examinations, exercises and the like. Lectures on Scots law would extend over the remaining two sessions, the professor lecturing daily for one hour to each class with a separate hour on two days of the week for each class for examinations¹²¹. These proposals were obviously aimed at the practice and conditions in Edinburgh. Further consideration of these provisional resolutions was postponed several times¹²², until the Senate agreed the following response on 22 April 1829:

In regard to the Law chair in this University the Commissioners have been already furnished by the Professor with the plan on which his lectures are conducted. His Students consist chiefly of young men attending writers offices and the Senate are unanimously of opinion that if any material change were made either in the plan or the hours of teaching it is at least very doubtful whether a class could be commanded¹²³.

This is a clear acknowledgement of Davidson's failure. Glasgow could now only hope to attract provincial apprentices to its 'practical' legal curriculum.

The Royal Commission endorsed 'speculative' legal education:

In this, as in other professions, it is necessary to provide a regular Course of instruction, so that Law may be studied as a liberal and enlightened science. It may be true that many Students desire only to acquire the Rudiments of Law, and the materials for immediate practice, perhaps in the inferior Courts. From this cause, if the Course shall not be recast, many important subjects may be entirely omitted. International Law, and other important branches of the science, may not engage the attention of the Professor: and thus Students are gradually accustomed to enter on practice at the Bar without any acquaintance with the general principles of Jurisprudence, and with limited and contracted views of the subject of their profession. We apprehend that it is essentially necessary to prevent the natural operation of this external cause from lowering the Course of Study, and that the Professor, as part of his regular duty, should have time for teaching the science of Law in the manner in which it should be taught for making an accomplished and enlightened Advocate¹²⁴.

118. Jardine to Hunter, 16 July 1801, GUL, MS Gen. 507/118.

119. Minutes of Meetings of Senate, 1819–1829, GUA 26689, p. 312 (22 Apr. 1828).

120. *Ibid.*, p. 337.

121. *Evidence . . . Volume II: University of Glasgow*, p. 557.

122. GUA 26689, p. 337 (22 Dec. 1828), p. 338 (15 Jan. 1829), p. 342 (7 Apr. 1829).

123. *Ibid.*, p. 345–346; *Evidence . . . Volume II: University of Glasgow*, p. 510.

124. *Report Made to His Majesty* (n. 6 *supra*), p. 54.

By reducing legal education in Glasgow to the supposedly 'practical', Davidson destroyed all that Millar had built up.

The modern establishment of the Scottish universities dates from the Universities (Scotland) Act 1858, under which a body of University Commissioners was established to draft ordinances to regulate detailed matters. One such ordinance created the degree of LL.B. in 1862. The degree was founded on the traditions of Scottish legal education developed in the eighteenth century. It was open only to graduates in arts. Students had to attend courses, and be examined, in Civil (Roman) law, Scots law, conveyancing, public law, constitutional law and history, and medical jurisprudence. The degree was to be a mark of 'academical' rather than 'professional' distinction, and examiners accordingly were to pay close attention to attainments in 'public law' and 'constitutional history'. 'Public law' in this context meant jurisprudence and international law. These were the subjects taught from the revived regius chair of Public Law and the Law of Nature and Nations in Edinburgh, and the regulations and the terms they used were in general heavily dependent on practice in that University¹²⁵.

It is true that the new degree—for a long time only available in the University of Edinburgh and at first taken by very few—reflected the interests of men such as James Lorimer who were strongly influenced by the impressive development of the law schools of Germany in the nineteenth century¹²⁶; none the less, in its focus on the 'academic', on jurisprudence, on history, and on Roman law, it reflected the type of legal education developed by Millar and endorsed by the Royal Commission of 1826¹²⁷. Aeneas Mackay commented in 1880:

In doing what they have done the legal profession in Scotland has done all, or almost all, it could have done for the furtherance of legal education upon a liberal basis. It has, after deliberate consideration, associated that education with the Universities, which are permanent national institutions for the promotion of liberal culture, and has gradually organized it on a model which, though not so complete as the Continental model, is of a similar kind¹²⁸.

The importance of 'scientific jurisprudence' was recognised¹²⁹. The reality was, of course, more complex. The provision to support legal education was still

125. See D.B. Horn, *A Short History of the University of Edinburgh, 1556–1889*, Edinburgh 1967, p. 177–178.

126. See J. Lorimer, *The Universities of Scotland Past, Present, and Possible*, Edinburgh 1854. For the numbers taking the degree, see, e.g., Lorimer, *Professional Graduation*, *Journal of Jurisprudence*, 24 (1880), 617–625 at p. 622. For a discussion, see R.D. Anderson, *Education and Opportunity in Victorian Scotland: Schools and Universities*, Edinburgh repr. 1989, p. 57–68. Anderson's is a more persuasive account of Lorimer than that found in G.E. Davie, *The Democratic Intellect: Scotland and her Universities in the Nineteenth Century*, Edinburgh 1961, p. 41–75. Indeed, much of what has been written in this paper implicitly disagrees with Davie's view of the Royal Commission of 1826.

127. On the central role of legal theory in legal education, see J. Lorimer, *Reasons for the Study of Jurisprudence as a Science*, Edinburgh 1868; idem, *The Institutes of Law: A Treatise of the Principles of Jurisprudence as determined by Nature*, 2nd edn., Edinburgh 1880.

128. Ae[neas] M[ackay], *Legal Education and the Scottish Universities*, *Journal of Jurisprudence*, 24 (1880), 626–638 at p. 636.

129. Lorimer, *Professional Graduation* (n. 126 *supra*), p. 624.

small, and the reality hardly reached the ideal¹³⁰. All this, however, is outwith the scope of this essay. But, despite the inevitable doubters¹³¹, the ideal was one in which the value of Millar's 'speculative' over Davidson's 'practical' legal education was authoritatively recognised. If reformed and altered by the experience of the nineteenth century, the tradition of education in law developed in eighteenth-century Scotland on humanistic models and transformed by the Enlightenment was asserted as the appropriate model for legal education. Well educated lawyers were ideally to have a broad, liberal education in a university in arts and law.

Appendix A

Comparative Outline of Millar's, Hume's and Davidson's Lectures on Scots Law¹³²

<i>Millar</i>	<i>Hume</i>	<i>Davidson</i>
Order of Lectures and Sources	Nature of Subject and Plan of Treatment	General Introduction Sources and Treatises
Husband and Wife	Husband and Wife	Husband and Wife
Parent and Child	Parent and Child	Parent and Child
Master and Servant	Guardian and Ward	Guardian and Ward
Guardian and Pupil or Minor	Voluntary Servants	Master and Servant
Things—Real Rights	Distinctions of Things—Rights — Personal Rights — Contract	Things — Obligations
Nature of Property —Feudal	Sale	Sale
Military Tenure — Frankalmoigne — Soccage — Burgage — Blench	Location — Tack	Location — Leases (Tacks)
Casualties of Superior	Charter Party	Charter Party Carriers
Present State of Tenures in Scotland	Loan — Interest — Usury Deposition ¹³³	Mandate

130. See, e.g., F., *Legal Training in Glasgow and Heidelberg*, Scottish Law Review, 7 (1891), 104-107.

131. *Legal Education*, Scottish Law Review, 5 (1899), 125-132. At *ibid.*, p. 127, however, the anonymous author remarked: 'As to the Roman law, its study is invaluable, — delivering the practitioner from the intangible abstractions of the mere philosopher, and saving him, at the same time, from the misleading analogies and confusions of the uneducated case-lawyer'.

132. For this outline I have used [J. Millar], *Heads of the Lectures on the Law of Scotland, in the University of Glasgow, M DCC LXXVII* [Glasgow 1777]; *Baron Hume's Lectures* (n. 59 *supra*); GUL, MSS Murray 340-341. I have taken the description of the lectures from the headings of the lecturer in Millar's case, from the chapter headings in the published version of Hume's lectures, and from the divisions and contents of Davidson's lectures as given by the student. I have, however, silently abbreviated, explained, or expanded these from time to time for comparative purposes. Occasionally, different titles have been given to the same topics, but this is usually obvious and easily understood. The divisions in the Appendix are not equivalent to individual lectures.

133. Hume dealt with deposition here in notes from 1796-1797.

Acquisition of Property by Occupancy	Mandate	Loan, Interest, Usury, <i>Commodatum</i>
Deposition		
By Accession	Society (Partnership)	Cautionry
Delivery	Cautionry	Joint Obligation and Copartnership
	Bills of Exchange	Bills of Exchange Of Crimes ¹³⁴
		Obligations Resulting from Equity
		Quasi-delict
	Assignment of Personal Claims	Assignations
Conveyance of land – Charter – Sasine – Resignation – Confirmation	Extinction of Obligations by Payment	Discharges
Servitude	Compensation and Retention	Compensation and Retention
Tithes	Novation	Novation, Delegation
Pledge – Wadset	Prescription	Prescription
Exclusive Privilege	Obligations <i>ex delicto</i> ¹³⁵	
	Obligations <i>quasi ex contractu</i>	
	Obligations <i>quasi ex delicto</i>	
Personal Rights and Obligations – Contract – Crime – Delin- quency – Equity and Utility	Right of Property	Real Rights – Property (including a discussion of modes of acquisition)
Contracts	Servitudes	Servitudes
Sale, Loan	Pledge and Hypothec	Pledge and Hypothec
	Tithes	
Deposit – Pledge – Commission (Bills of Exchange)	Exclusive Privilege	Exclusive Privilege
Copartnership – Suretyship (Cau- tionry)	Tacks	Leases (Tacks)
Rights Proceeding from a Crime or Delinquency	Feudal Investiture	Charters, Sasines
Crimes against Religion – Crimes against Civil Government	Superior's Estate	Ward, Feu, Blench, and Burgage Holding, Casualties of Superiority etc.

134. Hume gave a separate set of lectures on crimes: Cairns, *Millar's Lectures*, p. 396.

135. Hume sometimes delivered his lectures covering from obligations *ex delicto* to those *quasi ex delicto* inclusive before his lecture on assignation and after that on bills of exchange. Davidson is following that alternative scheme of Hume's lectures in this section of his course.

High Treason – Crimes against Police	Vassal's Estate	Parts and Pertinents, Regalia, Rivers, Salmon Fishing, Dovecotes, Hunting
Crimes against Individuals – Homicide	Transmission of Feudal Rights	Rights and Disposal and Modes of Transmission – Resignations – Confir- mations – Base Holdings Conjunct Fees
Rape – Mutilation and Demembration	Infestments in Conjunct Fee	Liferent – Terce – Courtesy
Crimes against Property – Theft, Robbery – Falsehood	Liferent	
Crimes against Individuals' Character	Wadset	Wadset
Delinquencies against Person, Property, Character and Reputa- tion	Heritable Bonds	Heritable Bonds
Rights and Obligations arising from Equity and Utility – Resti- tution	Real Liens	Reserved Faculty
Recompense Obligations founded on utility		Tithes
Extinction of Personal Rights (performance, compensation, acquit- tance, novation, confusion)	Adjudication	Adjudications
Transmission of Personal Rights 1) Voluntary; 2) By law	Judicial Sale	Judicial Sales
Prescription Heritable Succession	Prescription Heritable and Moveable	Positive Prescription Succession
Moveable Succession Testamentary Succession	Heritable Succession Settlements and Tailzies	Succession Entails and Contracts of Marriage
Entails	Privileges of Apparency	Heirs Privileges Arising from Apparency
Heirs Executors	Service of Heirs Moveable Succession	Services Succession in Moveables Bankruptcy
Actions ¹³⁶	Jurisdiction	Actions – Jurisdictions

136. Millar dealt with the Scottish courts and their jurisdiction in his Lectures on Government see, e.g., [J. Millar], *A Course of Lectures on Government; Given Annually in the University, Glasgow 1778*, 7-8 found bound in NLS MS 3931, and NLS MS 3931, p. 278-305.

	Jurisdiction of Supreme Courts (Session, Commissary, Admiralty, Exchequer)	Court of Session – Admiralty – Commissary Court
	Jurisdiction of Inferior Courts	Inferior Judges
Commencement of Actions (Civil and Criminal)	Summons and Execution	Proofs ¹³⁷
Procedure – Proof in Civil Causes	Proof of Oath of Party	
Procedure in Criminal Causes	Proof by Witness Probation by Writing Decrees Process of Review in Court of Session	
Execution of Sentences in Criminal and Civil Causes	Inhibitions	Diligence
Poinding – Arrestment Adjudication – Inhibition	Poinding Arrestment	
	Confirmation qua Creditor	
Personal Execution	Personal Diligence <i>Meditatio fugae</i> : Liberation <i>Cessio bonorum</i>	

Appendix B

The following manuscript notes are published, with permission, from Heineccius, *Operum . . . tomus quintus, in quo elementa iuris civilis secundum ordinem Institutionem et Pandectarum, commoda auditoribus methodo adornata*, GUL Pressmark B19-f.14. They are all from the *Elementa iuris civilis secundum ordinem Institutionum*, and the paragraph of the work as well as the relevant page is noted for convenience¹³⁸.

Paragraph	Page	Note
100	25	This was the most formal of any of the modes of manumission. This mode of manumission is an example of the <i>actio legis</i> .
101	25	Sect. 101 & the 3 following contains merely the less formal methods of manumission.
137	34	a slave being once sold, could not be recalled.
140	35	The father punished his children in the quality of a domestic judge but this was not the case as if he judged them in the way there might have been reference made to other courts which never was the case.

137. Davidson gave several lectures under this heading.

138. The notes are not carefully keyed to paragraphs; I have usually judged the appropriate paragraph by position and topic. It should be noted that some of the notes here tend towards the category of mere restatements of the paragraphs. In Heineccius, *Elementa iuris civilis secundum ordinem Institutionum*, in *Operum . . . tomus quintus*, p. 121, the MS note corrects a citation to the *Novels* in paragraph 450.

- 148-150 37-8 It was necessary that when a marriage took place both parties should be Roman citizens as it was not thought proper that a Roman Citizen should unite himself to a person of another Country. There were cases in which a child could marry without the leave of his father such as when the father was insane ² where the father was a prisoner-of-war & ³ where the father appeared to be unreasonable.
- 151 39 The marriage of relatives within certain distance was not allowed.
- 182 47 Relations connected by males were called *agnati* & those connected by female were called *cognati*.
- 204 53 Tutory was a *munus publicum* which the tutor was bound to undertake & pupils were bound to receive.
- 224 59 [*capitis deminutio*] from which we derive our term for capital punishment.
- 243 65 Nomination of Tutor could not be performed by deputation.
- 279 75 The security for any thing of importance was personal.
- 376 102 *accessio nullum hab[et] locum in fr[uctuum] perc[eptione] est mod[us] acq[ui]rendi tantum*¹³⁹.
- 638 171 Those legacies called *Captatoria* arose from the profligacy of Roman manners.
- 876 227 no part of the doctrine cont[aine]d in this Section is applicable to the Laws of Scotland.
- 948 245 *sors* means the Capital or stock of a Company.

139. In Heineccius, *Elementa iuris civilis secundum ordinem Institutionum*, in *ibid.*, p. 102, the annotator has deleted '*species accessionis*' from the clause '*Fructuum perceptio est species accessionis*' und substituted '*modus acquirendi possessionem*'.